



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 7202-98
14 April 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps Reserve for eight years on 11 April 1959. The record reflects that you were advanced to PFC (E-2) and were ordered to six months of active duty for training on 4 June 1960. You served without incident until 14 September 1960 when you received nonjudicial punishment (NJP) for failing to maintain a rifle in a clean condition. Punishment imposed was reduction in rank to PVT (E-1). You were honorably released from active duty on 3 December 1960 and transferred to the Marine Corps Reserve.

The record further reflects that you were advanced to PFC again and served without further incident until 17 May 1964 when you received a second NJP for cheating during an examination while attending a regular pay drill. Punishment imposed was a suspended reduction in rank.

You were honorably discharged upon completion of your obligated service on 10 April 1967.

In its review of your application, the Board conducted a careful search of your search of your records for any mitigating factors which might warrant the removal of the two NJPs from your record. However, no justification for such removal could be found. In this regard, the Board noted your contentions with regard to the first NJP that the humidity and climate created an environment that made it impossible to maintain a rifle in the condition that was required. Concerning the second NJP, you claim that the test was given in an informal setting to six to eight Marines of various ranks with no proctor present, that no one told you that it was not an open book test, and that there was open discussion during the test. You assert you were not allowed representation or informed of your right to appeal, the punishment was too severe for the offenses, and that 35 years was sufficient time for this blemish to remain on your record. The Board also noted the numerous character references that testify to your outstanding post-service career. Along these lines, your desire that the NJP's be removed in order that you may become an elected official.

The Board has no way of verifying your contentions since the evidence that was considered in both of these NJPs no longer exists. The Board noted it appears that these two NJPs have in no way hindered your upward mobility in your post-service career or restricted you from seeking public office. The fact you are apparently seeking or have been elected to public office does not provide a valid basis for purging these documents from your record. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

You may initiate action in a federal court of competent jurisdiction if you desire since you have exhausted your administrative remedies.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director